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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,251	06/23/2006	Martin Vogel	3737	1689
7590 Striker, Striker & Stenby 103 East Neck Road Huntington, NY 11743			EXAMINER SELLERS, ROBERT E	
			ART UNIT 1796	PAPER NUMBER
			MAIL DATE 06/05/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/584,251

Applicant(s)

VOGEL ET AL.

Examiner

Robert Sellers

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/02)
Paper No(s)/Mail Date 23 June 2006
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. Claims 2, 5, 6 and 10 use the terms "preferably" and "especially" to further limit certain features. It cannot be ascertained whether the claims are confined to the broader defined feature or the more limited one denoted by such terms. More favorable consideration would be given to the deletion of the more limited features from these claims and the denotation thereof in new independent claims.
2. The word "obtainable" in claim 6, line 2, does not affirmatively define the reactants of the Mannich base formulation in the absence of the word "obtained."

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 11-13 provides for the use of the multi-component kit, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 11-13 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

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4. Any redrafting of use claims 11-13 to the particular use would constitute a distinct invention subject to a restriction requirement wherein such claims would be withdrawn as directed to a non-elected invention.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gienau et al. Patent No. 6,645,340; French Patent No. 2,893,314 and Mishra et al. Patent No. 6,376,579 in view of Armin et al. Patent No. 6,214,159; Marten et al. Patent No. 4,481,349 and Neumann et al. Patent No. 5,576,108.

5. Gienau et al. (col. 2, lines 27-35) discloses a two-component composition for fastening anchoring means (col. 5, lines 52-55) wherein one component contains an epoxide resin and reactive diluent, and the other component contains an amine curing agent such as especially preferably Mannich bases without a residual content of phenols obtained by the condensation of polyamines, multihydric phenols and formaldehyde (col. 4, lines 55-60), inorganic fillers and curing catalysts. The epoxide resin component is mixed with the amine curing agent component in a ratio of 3:1 (col. 6, lines 30-31).

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6. The French patent (Derwent abstract) sets forth a two-component formulation for fixing purposes (Use section) wherein component A contains an epoxy resin and mineral and fibrous fillers, and component B contains a hardener such as a phenol-free Mannich base, fibrous filler and polyamine accelerator.

7. Mishra et al. (col. 2, lines 4-8) reports a two-part system wherein Component A is a reactive epoxy resin mixture and Component B contains a Mannich base curing agent (col. 3, lines 1-5 and 27-43) and an amine-base accelerator such as 2,4,6-tri(dimethylaminomethyl)phenol and possesses a viscosity of from 100 to 1000,000 cps (1 cps = 1 mPas). The ratio of Components A:B is about 3:1 (col. 4, lines 26-28).

The claimed H equivalents and viscosity of the Mannich base are not recited.

8. Armin et al. (col. 3 table) shows a blend of bisphenol A/F epoxide resin and a non-toxic Mannich base without residual contents of phenols obtained by the °condensation of polyamines, multihydric phenols and formaldehyde (col. 1, lines 52-58) with an amine hydrogen equivalent of approximately 75 g/eq.

9. Marten et al. (col. 4, lines 4-16, Mannich base condensate (A)) shows a Mannich base for hardening epoxy resins prepared by reacting m-xylylenediamine, phenol and formaldehyde exhibiting a viscosity of 2500 mPas and a hydrogen equivalent weight (col. 3, lines 66-67, HAV) of 70.

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10. Neumann et al. Patent No. 5,576,108 (cols. 6-7, Examples 1-3) shows curing components for epoxy resins of a Mannich reaction (col. 2, lines 33-36) of alkylated polyhydroxy aromatics, polyamines and aldehydes exhibiting hydrogen equivalent values (HEV) of 73, 68 and 72, and viscosities of 1900, 2100 and 1400 mPas, respectively.

11. It would have been obvious to employ the Mannich bases of Gienau et al., the French patent and Mishra et al. with the hydrogen equivalent values shown by Armin et al. and Neumann et al. in order to optimize the curability with the epoxy resin.

12. It would have been obvious to use the Mannich bases of Gienau et al, the French patent and Mishra et al. with the viscosities shown by Neumann et al. in order to mitigate clouding and improve the pendulum hardness for 1 day at 5°C and 95% relative humidity (col. 8, lines 62-67 and cols. 9-10, Table 1, wherein the lower viscosity Mannich bases of Examples 1-3 show higher pendulum hardnesses than the higher viscosity Mannich bases of Examples 4 and 5).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Sellers whose telephone number is (571) 272-1093. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

/Robert Sellers/
Primary Examiner
Division 1796